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APPLICATION NO.	FILING DATE	FIRST NAMED INVENTOR	ATTORNEY DOCKET NO.	CONFIRMATION NO.
10/807,567	03/23/2004	David L. Marvit	073338.0197 (04-50469 FLA	3070
5073 7590 07/20/2007 BAKER BOTTS L.L.P. 2001 ROSS AVENUE SUITE 600 DALLAS, TX 75201-2980			EXAMINER LIANG, REGINA	
			ART UNIT 2629	PAPER NUMBER
			NOTIFICATION DATE 07/20/2007	DELIVERY MODE ELECTRONIC

Please find below and/or attached an Office communication concerning this application or proceeding.

The time period for reply, if any, is set in the attached communication.

Notice of the Office communication was sent electronically on above-indicated "Notification Date" to the following e-mail address(es):

mike.furr@bakerbotts.com
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Office Action Summary

Application No.

10/807,567

Applicant(s)

MARVIT ET AL.

Examiner

Regina Liang

Art Unit

2629

-- The MAILING DATE of this communication appears on the cover sheet with the correspondence address --

Period for Reply

A SHORTENED STATUTORY PERIOD FOR REPLY IS SET TO EXPIRE 3 MONTH(S) OR THIRTY (30) DAYS, WHICHEVER IS LONGER, FROM THE MAILING DATE OF THIS COMMUNICATION.

- Extensions of time may be available under the provisions of 37 CFR 1.136(a). In no event, however, may a reply be timely filed after SIX (6) MONTHS from the mailing date of this communication.
- If NO period for reply is specified above, the maximum statutory period will apply and will expire SIX (6) MONTHS from the mailing date of this communication.
- Failure to reply within the set or extended period for reply will, by statute, cause the application to become ABANDONED (35 U.S.C. § 133). Any reply received by the Office later than three months after the mailing date of this communication, even if timely filed, may reduce any earned patent term adjustment. See 37 CFR 1.704(b).

Status

1) ☒ Responsive to communication(s) filed on 29 May 2007.

2a) ☐ This action is **FINAL**.

2b) ☒ This action is non-final.

3) ☐ Since this application is in condition for allowance except for formal matters, prosecution as to the merits is closed in accordance with the practice under *Ex parte Quayle*, 1935 C.D. 11, 453 O.G. 213.

Disposition of Claims

4) ☒ Claim(s) 1,3,4,6-9,11,13-16 and 18-25 is/are pending in the application.

4a) Of the above claim(s) _____ is/are withdrawn from consideration.

5) ☐ Claim(s) _____ is/are allowed.

6) ☒ Claim(s) 1,3,4,6-9,11,13-16 and 18-25 is/are rejected.

7) ☐ Claim(s) _____ is/are objected to.

8) ☐ Claim(s) _____ are subject to restriction and/or election requirement.

Application Papers

9) ☐ The specification is objected to by the Examiner.

10) ☐ The drawing(s) filed on _____ is/are: a) ☐ accepted or b) ☐ objected to by the Examiner.

Applicant may not request that any objection to the drawing(s) be held in abeyance. See 37 CFR 1.85(a).

Replacement drawing sheet(s) including the correction is required if the drawing(s) is objected to. See 37 CFR 1.121(d).

11) ☐ The oath or declaration is objected to by the Examiner. Note the attached Office Action or form PTO-152.

Priority under 35 U.S.C. § 119

12) ☐ Acknowledgment is made of a claim for foreign priority under 35 U.S.C. § 119(a)-(d) or (f).

a) ☐ All b) ☐ Some * c) ☐ None of:

1. ☐ Certified copies of the priority documents have been received.

2. ☐ Certified copies of the priority documents have been received in Application No. _____.

3. ☐ Copies of the certified copies of the priority documents have been received in this National Stage application from the International Bureau (PCT Rule 17.2(a)).

* See the attached detailed Office action for a list of the certified copies not received.

Attachment(s)

1) ☒ Notice of References Cited (PTO-892)

2) ☐ Notice of Draftsperson's Patent Drawing Review (PTO-948)

3) ☐ Information Disclosure Statement(s) (PTO/SB/08)
Paper No(s)/Mail Date _____.

4) ☐ Interview Summary (PTO-413)
Paper No(s)/Mail Date. _____.

5) ☐ Notice of Informal Patent Application

6) ☐ Other: _____.

DETAILED ACTION

1. The finality of last action is withdrawn.

Double Patenting

2. The nonstatutory double patenting rejection is based on a judicially created doctrine grounded in public policy (a policy reflected in the statute) so as to prevent the unjustified or improper timewise extension of the “right to exclude” granted by a patent and to prevent possible harassment by multiple assignees. A nonstatutory obviousness-type double patenting rejection is appropriate where the conflicting claims are not identical, but at least one examined application claim is not patentably distinct from the reference claim(s) because the examined application claim is either anticipated by, or would have been obvious over, the reference claim(s). See, e.g., *In re Berg*, 140 F.3d 1428, 46 USPQ2d 1226 (Fed. Cir. 1998); *In re Goodman*, 11 F.3d 1046, 29 USPQ2d 2010 (Fed. Cir. 1993); *In re Longi*, 759 F.2d 887, 225 USPQ 645 (Fed. Cir. 1985); *In re Van Ornum*, 686 F.2d 937, 214 USPQ 761 (CCPA 1982); *In re Vogel*, 422 F.2d 438, 164 USPQ 619 (CCPA 1970); and *In re Thorington*, 418 F.2d 528, 163 USPQ 644 (CCPA 1969).

A timely filed terminal disclaimer in compliance with 37 CFR 1.321(c) or 1.321(d) may be used to overcome an actual or provisional rejection based on a nonstatutory double patenting ground provided the conflicting application or patent either is shown to be commonly owned with this application, or claims an invention made as a result of activities undertaken within the scope of a joint research agreement.

Effective January 1, 1994, a registered attorney or agent of record may sign a terminal disclaimer. A terminal disclaimer signed by the assignee must fully comply with 37 CFR 3.73(b).

3. Claims 1, 3, 4, 6-9, 11, 13-16, 18-25 are rejected on the ground of nonstatutory obviousness-type double patenting as being unpatentable over claims 1-23 of U.S. Patent No. 7,176,887. Although the conflicting claims are not identical, they are not patentably distinct from each other because they are obvious over each other.

The following is an example for comparing claim 1 of this application and claim 8 of U.S. Patent No. 7,176,887.

Claim 1 of this application	claim 8 of U.S. Patent No. 7,176,88
A motion controlled handheld device	A motion controlled handheld device

comprising: a display having a viewable surface and operable to generate an image;	comprising: a user interface comprising a display having a viewable surface and operable to generate a current image;
a gesture database maintaining a plurality of gestures, each gesture defined by a motion of the device with respect to a first position of the device;	a gesture database comprising a plurality of gestures, each gesture defined by a motion of the device with respect to a first position of the device;
a motion detection module operable to detect motion of the handheld device within three dimensions and to identify components of the motion in relation to the viewable surface;	a motion detection module operable to detect motion of the device within three dimensions and to identify components of the motion in relation to the viewable surface;
a control module operable to: identify a base reference position of the device; track movement of the device, using the motion detection module, to identify a potential gesture; compare the potential gesture against the gestures in the gesture database; determine whether the potential gesture matches to a compared one of the gestures based on whether a difference between the potential gesture and the compared gesture is	a motion response module operable to compare movement of the device against the gestures to determine whether a potentially matching gesture and the movement are within a gesture precision threshold;

within a precision threshold;	
and wherein a level of precision required by the precision threshold is based at least in part on an environmental state of the device, the environmental state comprising a motion state describing an amount of background noise expected in the components of the motion.	and wherein the controller is operable to set the gesture precision threshold based on the environmental state of the device; a device state tracking module operable to analyze the components to determine an environmental state of the device, the environmental state comprising a motion state and an orientation of the device with respect to gravity; and a controller operable to execute an application and to perform an operation of the application based on the environmental state.

As can be seen above, claim 8 of U.S. Patent No. 7,176,887 differs from claim 1 of this application in not having a control module operable to identify a base reference position of the device and track movement of the device to identify a potential gesture. However, the patent claims are in comprising format and therefore cover structure not specifically recited. The patent disclosure clearly describes a control module operable to identify a base reference position of the device and track movement of the device to identify a potential gesture and are encompassed by the patent claims comprising format.

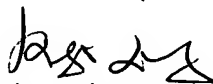
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In view of the above analysis, applicant's claim 1 and patent claim 8 are not patentably distinct from one another and in the absence of a terminal disclaimer would result in an unjustifiable time wise extension of applicant patent.

4. Any inquiry concerning this communication or earlier communications from the examiner should be directed to Regina Liang whose telephone number is (571) 272-7693. The examiner can normally be reached on Monday-Friday from 8AM to 5:00PM.

If attempts to reach the examiner by telephone are unsuccessful, the examiner's supervisor, Richard Hjerpe, can be reached on (571) 272-7691. The fax phone number for the organization where this application or proceeding is assigned is 571-273-8300.

Information regarding the status of an application may be obtained from the Patent Application Information Retrieval (PAIR) system. Status information for published applications may be obtained from either Private PAIR or Public PAIR. Status information for unpublished applications is available through Private PAIR only. For more information about the PAIR system, see <http://pair-direct.uspto.gov>. Should you have questions on access to the Private PAIR system, contact the Electronic Business Center (EBC) at 866-217-9197 (toll-free).


Regina Liang
Primary Examiner
Art Unit 2674

7/11/07